

# **California Air Resources Board Draft Enforcement Policy**

**DRAFT-ENFORCEMENT POLICY-20170629-WORKSHOP-2**

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## Contents

Introduction.....	4
Enforcement Authority .....	4
Regulatory Compliance Resources .....	5
Regulation Design and Implementation.....	5
Community Support .....	6
Types of Enforcement Actions .....	6
CARB’s Enforcement Process .....	7
Administrative Procedures .....	8
Penalties .....	9
Supplemental Environmental Projects .....	13
Support and Oversight of Local Air District Enforcement Programs .....	13
Public Communication and Information Protection .....	14
Appendix A: Alphabetical Listing of Enforcement Programs .....	16
Appendix B: Regulatory Matrix .....	19
Appendix C: Supplemental Environmental Projects Policy .....	20
Appendix D: California Air Resources Board Automated License Plate Reader Privacy and Usage Policy .....	24

### Introduction

The mission of the California Air Resources Board (CARB) is to promote and protect public health, welfare, and ecological resources through the effective and efficient reduction of air pollutants while recognizing and considering the effects on the economy of the State. CARB adopts regulations designed to reduce criteria pollutants, air toxics, and greenhouse gas (GHG) emissions. While it is the responsibility of industry to meet regulatory requirements, CARB works to ensure that regulated industries are aware of, and understand, the requirements of each regulation. The effectiveness of each regulation depends on industry compliance. CARB's enforcement program is designed to deter noncompliance and to ensure regulated industries that have not met CARB's regulatory requirements are brought into compliance.

The Enforcement Division seeks to achieve CARB's mission through the fair, consistent, and comprehensive enforcement of air pollution laws, and by providing training and compliance assistance. Enforcement efforts need to be focused to ensure compliance, especially in communities that may be disproportionately impacted by air pollution. These efforts include responding to concerns from the public when they are being impacted by a violation, providing compliance assistance to regulated entities, conducting inspections and investigations to gather additional information, and taking enforcement action when necessary to resolve noncompliance as quickly as possible.

This document provides CARB's enforcement-related policies, which are rooted in several key principles: protection of public health and the environment, fairness and equal treatment across the regulated industry, deterrence through the appropriate assessment of penalties, and responsiveness to the public.

### Enforcement Authority

CARB's regulatory and associated enforcement authority is specified in the California Health and Safety Code (HSC). Within Division 26, Part 2 provides authority for air toxic control measures, Part 4 provides authority for stationary and some area wide sources, and Part 5 provides authority for mobile sources (including motor vehicles) and fuels. Division 25.5 applies to sources of GHGs that CARB regulates. The statutes embrace the legal doctrine of "strict liability," meaning a prohibited act constitutes a violation no matter one's intent or the amount of care taken to avoid violations. In several provisions, maximum penalties are higher when violations are intentional or willful. CARB regulations are located in Titles 13 and 17 of the California Code of Regulations (CCR). In some limited cases, authority has been delegated to CARB to enforce federal law such as the Asbestos Program with the federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulation for asbestos.

## **Regulatory Compliance Resources**

CARB works closely with regulated parties by providing information and resources to assist business in achieving compliance. This includes providing compliance materials, broadcasting advisories to inform industry of regulatory requirements and upcoming deadlines, and answering specific questions to help regulated parties understand their compliance requirements. The Enforcement Division works with other CARB Divisions to provide this assistance.

CARB's Office of the Ombudsman specializes in helping owners of small businesses and start-ups navigate permitting, avoid compliance issues, and find financial assistance and incentive programs with the sole purpose of encouraging compliance. The Ombudsman's office can be reached directly at (800) 272-4572; more information is available at: <https://www.arb.ca.gov/ba/omb/omb.htm>.

To assist the trucking industry, CARB developed the Truck Stop website ([www.arb.ca.gov/truckstop](http://www.arb.ca.gov/truckstop)), which provides important information covering compliance requirements, funding opportunities, upcoming deadlines, and other diesel programs information. For additional information, CARB offers a diesel hotline at 866-6DIESEL (866-634-3735), and compliance assistance by email ([8666diesel@arb.ca.gov](mailto:8666diesel@arb.ca.gov)).

CARB staff widely broadcasts enforcement advisories, maintains web pages and list-serves on regulatory developments, distributes brochures and fact sheets, publishes articles in trade journals, responds to public inquiries and offers compliance assistance workshops. Interested parties may sign up for a wide array of email alerts about regulatory program development at the following website ([www.arb.ca.gov/lists/](http://www.arb.ca.gov/lists/)).

CARB's Compliance Training Program provides comprehensive compliance training covering a wide array of stationary and mobile source programs. The Compliance Training Program is hosted on CARB's website ([www.arb.ca.gov/training](http://www.arb.ca.gov/training)) and provides access to more than 50 courses on beginner and advanced compliance topics. The training program can be reached via email at [arbtrain@arb.ca.gov](mailto:arbtrain@arb.ca.gov) or directly by phone at (916) 322-3937.

All CARB programs maintain a webpage with the latest regulatory and compliance updates. Links to each of CARB's programs are available in Appendix A.

## **Regulation Design and Implementation**

Effective enforcement starts with a clear and understandable regulation. When new regulations are being developed or when existing regulations are being amended, CARB enforcement, legal, economic, and regulatory staff work closely together to ensure regulations are clearly written. Regulations must be written to assure effective implementation and enforcement, and to ensure compliance is achievable and cost-effective. Regulations should include enforcement mechanisms and may in some cases include penalty structures and calculation methods consistent with applicable

## DELIBERATIVE DRAFT

statutes and established case law to provide transparency and an effective deterrent to non-compliance. Regulated entities are expected to understand what they need to do to comply and the consequences of non-compliance. They need to know that mechanisms are in place to enforce against non-compliance, achieve a level playing-field and maximize emissions reductions for public health and environmental protection. Staff may periodically hold meetings with stakeholders to discuss program-specific implementation and enforcement.

### **Community Support**

CARB's enforcement program works closely with the public, including disadvantaged communities, to identify, verify, and resolve air quality complaints. CARB maintains an active complaints program to support the public when impacted by an air quality concern. The goal of the program is to:

- Provide a clear and easy-to-use process for lodging complaints;
- Work to resolve complaints quickly and comprehensively; and
- When appropriate, report back the results of complaint investigations to complainants.

Additionally, CARB recognizes the need for increased enforcement efforts in disadvantaged communities, therefore:

- CARB actively supports and participates in California Environmental Protection Agency (CalEPA) environmental justice enforcement initiatives through focused enforcement of all relevant CARB programs in selected communities;
- The Enforcement Division's environmental justice team focuses on understanding and addressing community concerns. Staff liaisons are assigned to communities across the state; and
- At least 50 percent of all mobile source inspections occur in disadvantaged communities.

### **Types of Enforcement Actions**

There are three types of legal processes that CARB uses to resolve violations: civil, administrative, and criminal.

#### Civil Action

In cases where a mutual settlement cannot be reached, CARB will refer the matter to the Attorney General for civil litigation. As part of the civil process, CARB can obtain a court order or injunction to stop ongoing violations.

#### Administrative Action

CARB has the authority to seek administrative penalties for some violations. In this process, administrative hearings are conducted by administrative law judges using CARB's administrative hearing procedures.

### *Criminal Action*

In some cases, CARB may identify potential criminal violations. In those instances, the case may be referred to the Attorney General, a District Attorney, or other prosecutors for criminal prosecution.

Whether pursuing civil or administrative penalties, CARB retains the ability to negotiate mutual settlement agreements at any point before a final court ordered resolution of the case. The settlement agreement will include a compliance plan and penalties dependent on the facts and circumstances of the case.

### **CARB's Enforcement Process**

CARB's enforcement program identifies, assesses, and resolves violations; and strives to ensure fair and consistent treatment of each responsible party when applying the laws and regulations to each case. CARB's enforcement process is intended to be a cooperative effort involving constant and clear communication between CARB and each responsible party to ensure all relevant information is shared and full compliance is obtained.

### *Identifying a Potential Violation*

CARB learns about potential violations through inspections, tips from the public, data analysis, referrals from other agencies, mandatory emissions reporting, and voluntary disclosure. Once potential violations have been identified, CARB will initiate discussions with the responsible party to explain the enforcement process and to obtain additional information. Usually this information is collected through a cooperative process with the responsible party.

In situations where the responsible party is not cooperative, CARB has authority under Government Code sections 11180, et seq. to subpoena information administratively. This authority to compel information disclosure may be used in cases where a violation has occurred or is anticipated.

### *Evaluating Information*

Enforcement staff evaluates the information collected and works with CARB's Legal Office to determine violations of statutory and/or regulatory requirements. In many instances, more information is needed; in those cases CARB most often collaboratively works with the responsible party to obtain information to identify and assess potential violations.

### *Notifying the Responsible Party*

When violations are substantiated, CARB will issue a citation, notice of violation, or equivalent document. In some cases, CARB issues a cease and desist letter that requires the responsible party to immediately refrain from the on-going violation.

## DELIBERATIVE DRAFT

All notifications will contain the following information:

- A clear listing of each violation then known;
- The laws or regulations on which each violation is based;
- The facts on which each violation is based;
- Whether the law prohibits emissions at a specific level, and if so, a quantification of excess emissions where practicable;
- Information related to potential for additional or ongoing violations; and
- Information about how to contact the Enforcement Division to resolve violations.

CARB will issue a citation, notice of violation, or equivalent document only in cases where CARB believes the evidence is sufficient and a violation could be proven in court. CARB may also initiate a vehicle registration hold through the Department of Motor Vehicles (DMV). Once issued, a registration hold precludes a vehicle from being registered until the violation is cleared.

### Opportunity to Discuss

When CARB notifies a responsible party that they have violated a law or regulation, we provide the responsible party an opportunity to discuss the violation. This discussion serves several purposes. First, the responsible party may believe the accusation in the notice of violation is incorrect and they may provide evidence to persuade staff to rescind the notice of violation. This can and does happen when a responsible party provides sufficient evidence to prove a violation did not occur. Second, the opportunity to discuss allows a forum for discussing an appropriate resolution to the case. This generally includes a discussion of the severity of the violation relative to the eight factors required by law and all other relevant facts and circumstances. Finally, the opportunity to discuss most often becomes the negotiation between CARB and the responsible party that in most cases leads to a mutual settlement and case resolution.

### **Administrative Procedures**

In 1988, the California Legislature (Legislature) enacted HSC section 44011.6 directing CARB to assess administrative penalties for violations of the Heavy-Duty Vehicle Inspection Program.<sup>1</sup> In 1995, the legislature enacted HSC section 43028<sup>2</sup> authorizing CARB to assess administrative penalties as an alternative for civil penalties for specific fuel violations. (See also HSC section 43031(a).) HSC section 43028 applies to administrative penalty assessments that do not exceed \$25,000 per day and that do not cumulatively exceed \$300,000. The administrative hearings are conducted by administrative law judges (ALJ) appointed by CARB. The ALJ will conduct the hearing

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<sup>1</sup> Added by Stats.1988, c. 1544 (S.B.1977), § 26. Amended by Stats.1989, c. 940, § 2; Stats.1990, c. 1433 (S.B.1874), § 16; Stats.1993, c. 578 (A.B.584), § 1; Stats.1996, c. 292 (A.B.1460), § 1; Stats.2004, c. 644 (A.B.2701), § 21.

<sup>2</sup> Added by Stats.1995, c. 966 (S.B.163), § 3.

## DELIBERATIVE DRAFT

using CARB's administrative hearing procedures established in regulation and available at: [www.arb.ca.gov/enf/admpenal/curregs.htm](http://www.arb.ca.gov/enf/admpenal/curregs.htm).

In 2001, the Legislature enacted HSC section 42410<sup>3</sup> and 43023<sup>4</sup>, which broadly authorized CARB to impose administrative penalties as an alternative to civil penalties for almost all violations subject to CARB's governing statutes, and rules and regulations adopted to implement, interpret, and enforce such statutes. The authority applies to administrative penalty assessments that do not exceed \$10,000 per day and do not cumulatively exceed \$100,000. The administrative hearings are conducted by ALJs employed by the Department of General Services, Office of Administrative Hearings (OAH), using CARB's administrative hearing procedures, which are established in regulation and available at: [www.arb.ca.gov/enf/admpenal/curregs.htm](http://www.arb.ca.gov/enf/admpenal/curregs.htm).

CARB also has the option of imposing administrative penalties through its own Administrative Hearing Office pursuant to HSC sections 43028 and 44011.6(m). ALJs employed by CARB conduct the administrative hearings using CARB's administrative hearing procedures, which are established in regulation and available at: [www.arb.ca.gov/enf/admpenal/curregs.htm](http://www.arb.ca.gov/enf/admpenal/curregs.htm).

CARB retains discretion to determine whether an individual case will be enforced through administrative or civil processes. CARB is developing and may choose to apply expanded administrative procedures for the Refrigerant Management Program, Air Toxic Control Measure (ATCM) programs involving diesel sources, and the Periodic Smoke Inspection Program.

### Penalties

A key component of the settlement process is the determination of an appropriate penalty. Penalties are designed to remove any economic benefit a responsible party obtained through noncompliance and to deter future violations across the industry. While maximum penalties are established by statute, CARB attempts to balance the severity of the violation with fairness and consistency by considering all relevant circumstances of each individual case, including eight factors required by law for consideration.

A case may be more severe because of the facts and circumstances of the case, and in these cases, CARB may consider penalties at or near the statutory maximum. While maximum penalties increased in 2016 to provide increased deterrence for severe violations, these higher penalties will be applied where appropriate.

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<sup>3</sup> Added by Stats.2001, c. 769 (S.B.527), § 3.

<sup>4</sup> Added by Stats.2001, c. 769 (S.B.527), § 18. Amended by Stats.2010, c. 413 (S.B.1402), § 2, eff. Sept. 28, 2010.

## DELIBERATIVE DRAFT

### The Eight Statutory Factors

1. *The extent of harm to public health, safety and welfare caused by the violation.* This factor refers to the extent of injury to air quality, property, persons, or the implementation of an air quality regulation. Violations that undermine emissions standards or cause the release of excess emissions are serious violations warranting substantial penalties. In cases with substantial excess emissions, staff may estimate those emissions and value them at the cost to achieve criteria pollutant and GHG reductions using advanced technologies necessary to achieve implementation of CARB's emissions control strategies;
2. *The nature and persistence of the violation, including the magnitude of the excess emissions.* This factor refers to the duration of a violation. So, in most cases, the penalties increase the longer a violation occurs. Penalties also increase when the nature of the violation is more severe, for example when it involves toxic air contaminants or is intentional or willful.
3. *The compliance history of the defendant, including the frequency of past violations.* CARB staff may consider a range of factors relating to compliance history including but not limited to repeat violations of the same regulatory requirement, of a different regulatory requirement in the same regulation, and violations of multiple regulations, depending on the relevant facts and circumstances of the case and the severity of the violations. In addition, staff considers the frequency and cause of multiple violations.
4. *The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance.* Penalties may be lower for responsible parties who have made systematic attempts beyond the normal standard of care to prevent violations, including actions taken during installation, operation, and maintenance of equipment.
5. *The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods.* Penalties may be lower for responsible parties who demonstrate they took creative actions beyond efforts, which are common in the industry to ensure compliance, even if not entirely successful.
6. *The efforts of the defendant to attain, or provide for, compliance prior to violation.* Penalties may be lower for responsible parties who took action in an attempt to comply with relevant regulatory requirements prior to the violation, but were not able to fully comply.
7. *The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation.* Penalties may be reduced when a

## DELIBERATIVE DRAFT

responsible party fully complies with an investigation and provides requested information in a complete and timely manner. Additionally, actions a responsible party takes to mitigate the environmental and programmatic impacts of a violation are considered when determining an appropriate penalty but are also weighed against the severity of the violation.

8. *The financial burden to the defendant.* When a responsible party claims they are unable to pay the proposed penalty, CARB will review the viability of the business by evaluating assets, revenues, gross income, net income, and/or other relevant information to determine how the penalty might impact future viability. If an impact to viability is identified, CARB may reduce penalties and/or establish a payment plan to ensure the business can continue operations.

### Additional Considerations

In addition to the eight factors, there are several additional factors CARB evaluates when determining an appropriate penalty.

1. *Deterrence.* A penalty is designed to impose a consequence that will deter both the responsible party and others from future violations. An appropriate penalty removes any economic benefit resulting from the violation and includes an additional amount reflecting the severity of the violation. CARB considers the need for deterrence at both program-wide and industry-specific levels.

In more severe cases, CARB may quantify the economic benefit of non-compliance. The economic benefit of noncompliance may include but is not limited to benefits from delayed costs, benefits of avoided costs, benefits from business transactions that would not have occurred but for the illegal actions of the violator, and benefits derived from any competitive advantage gained in the marketplace through illegal actions. Effective deterrence may call for penalties well in excess of the economic benefit of non-compliance.

2. *Fairness.* CARB strives to assess appropriate penalties through the consistent application of the eight factors and additional considerations, although the resulting penalty amount may vary due to the unique circumstances of each situation. The size of the responsible party is considered when determining a penalty. A higher penalty may be unfair for a smaller business, but may be warranted for a larger business.
3. *Investigation Costs and Litigation Risk.* In some cases, investigation costs and/or litigation risk may be considered. CARB reviews the relative strengths and weaknesses of each case and considers litigation risk when it assesses penalties.

## DELIBERATIVE DRAFT

4. *Impact to Regulatory Program.* CARB considers the extent to which a violation undermines the regulatory framework and functioning of enforcement programs. For example, failure to maintain records or to submit certification applications could have this effect. These violations have a greater impact than where compliance can be assessed independent of reporting requirements.
5. *Voluntary Disclosure.* CARB considers a reduction in penalties for violations that are voluntarily disclosed. The reduction is dependent on the extent to which the following criteria are met:
  - The responsible party discovered the violation through a voluntary environmental audit or other systematic procedure or practice reflecting the responsible party's due diligence in preventing, detecting, and correcting violations;
  - The violation was not discovered due to legal mandate;
  - The responsible party disclosed the violation in writing, no more than 21 days after discovery of the violation;
  - The disclosure was independently offered and not made in response to a pending government investigation, enforcement action, or third party complaint;
  - The violation was corrected immediately;
  - The responsible party agreed to take specific actions to prevent recurrences;
  - The responsible party has not committed a similar program violation within the past three years;
  - The violation did not cause actual harm, present imminent or substantial endangerment to human health or environment, or violate specific terms of any judicial or administrative order or consent agreement; and
  - The responsible party fully cooperated with CARB's investigation.

The reduction may range from 25 percent to 75 percent from penalties assessed based on the relevant facts and circumstances of the case. No two cases are the same. The higher reductions are reserved for cases that generated no economic benefit to the responsible party.

### Minor Violations

CARB may reduce penalties for minor violations in cases where:

- There are no emissions impacts in excess of any applicable law or regulation;
- The violation does not impede CARB's ability to determine compliance with any emission standard;
- The violation has been corrected;

## DELIBERATIVE DRAFT

- The responsible party provides complete cooperation; and
- The violations are resolved expeditiously.

CARB will notify the responsible party if they qualify for the reduction, and may consider reducing penalties between 75 percent and 100 percent. The amount of the reduction depends on the extent of the following:

- Compliance history;
- CARB resources necessary to identify, process, and resolve the violation;
- Economic benefit of non-compliance; and
- Harm to functioning of the regulatory program.

Attached for reference is Appendix B of this document, which provides a matrix of the laws and regulations CARB enforces and the corresponding average penalties on a per-unit basis as of September 2017.

### **Supplemental Environmental Projects**

As a condition of all settlements and judgments, CARB requires the violator to achieve and maintain compliance with air quality laws and regulations and to pay a monetary civil penalty. In some cases, CARB may allow the responsible party to satisfy part of the monetary penalty by voluntarily offsetting a portion of their civil penalty by performing or funding one or more Supplemental Environmental Projects (SEP or Project). For purposes of this policy, SEPs are projects not otherwise required by law that benefit air quality by reducing emissions, reducing exposure to air pollution, or preventing future air quality violations. SEP determinations occur after a settlement amount has been determined.

CARB's SEP policy is located in Appendix C.

### **Support and Oversight of Local Air District Enforcement Programs**

HSC section 41500 requires CARB to coordinate air pollution control activities throughout the State. The Enforcement Division supports this mandate by reviewing the enforcement practices of California's 35 local air districts to ensure that reasonable actions are being taken to enforce applicable rules and regulations. To support these objectives, CARB provides training to air district staff, provides inspection and investigative support, and evaluates district actions to ensure effective program implementation. CARB also provides this support to local air districts that have been delegated authority to help with the enforcement of some CARB regulations.

Each local air district has different circumstances relating to air quality challenges. State law vests local air districts with the primary responsibility for establishing and enforcing air pollution control regulations applicable to stationary sources. This statutory construct adds another layer of consideration, in addition to those required by statute (HSC section 42403 broadly applies to violations at stationary sources). In

## DELIBERATIVE DRAFT

exercising their statutory authority over stationary sources, many local air districts have established mutual settlement programs (MSP) and related enforcement policies. CARB staff encourages local air districts to develop MSPs and related enforcement policies, where such programs do not already exist. CARB staff believes that the tenets established in this policy are relevant and should be considered by the local air districts when implementing their local enforcement programs.

CARB has vested authority to regulate and limit emissions of GHGs that contribute to global climate change. When CARB has granted local air districts authority (e.g. under a memorandum of understanding) to enforce regulations with statewide applicability (e.g. regulations adopted to limit GHG emissions), CARB staff believes that the principles established by this policy should be used by local air district enforcement staff to ensure that their enforcement actions broadly result in a generally consistent outcome statewide.

### **Public Communication and Information Protection**

CARB strives to ensure that information relating to case investigations is transparent and publicly available. Specifically, it is the Enforcement Division's policy to:

- Disclose information related to completed investigations upon request, excluding any information protected by law. CARB will maintain closed case files consistent with its file retention policy. All settlement agreements will be maintained indefinitely and will be posted on CARB's public webpage;
- Disclose any citation, notice of violation, or cease and desist letter upon request;
- Make available to the public a summary of our enforcement efforts, including but not limited to:
  - All SEPs and associated accounting of project expenditures;
  - An annual report that summarizes all enforcement activities and provides statistics about each enforcement program;
  - An assessment of compliance rates for key programs; and
- Publicize enforcement efforts through activities such as compliance assistance programs and press events that highlight recent settlements.

While seeking to maintain a transparent program, CARB protects some information from disclosure. Information relating to pending investigations is generally not released in order to protect the integrity of the investigation as well as those under investigation. When CARB determines that a violation has occurred, that violation will be documented in a notice of violation and may be released as described above.

CARB has a duty to protect certain types of information related to regulated entities and takes this responsibility very seriously. For example, during the course of an investigation, a company may be asked to divulge confidential business information in order to determine the extent of potential violations. CARB protects this confidential

## DELIBERATIVE DRAFT

information in accordance with State law and maintains it in case files in accordance with file retention policies. Similarly, during the course of an investigation, CARB may collect vehicle registration and/or driver's license information. CARB may also collect and use information from an automated license plate reader. This information is strictly confidential and maintained in accordance with State law, CARB policy, and inter-agency agreements granting access to the information.

CARB's usage and privacy policy on the use of an Automated License Plate Reader is found in Appendix D.

As a practical matter, confidential information is kept only for the period in which it is required to be maintained and may be released only if CARB is legally required to do so.

## DELIBERATIVE DRAFT

### Appendix A: Alphabetical Listing of Enforcement Programs

Consumer Products Programs	Additional Information
Aerosol Coating & Consumer Products Program	<a href="http://arb.ca.gov/enf/consprod.htm">http://arb.ca.gov/enf/consprod.htm</a>
Composite Wood Products Program	<a href="http://www.arb.ca.gov/enf/compwood.htm">http://www.arb.ca.gov/enf/compwood.htm</a>

Diesel Programs	Additional Information
Commercial Harbor Craft Program	<a href="http://www.arb.ca.gov/ports/marinevess/harborcraft.htm">http://www.arb.ca.gov/ports/marinevess/harborcraft.htm</a>
Commercial Vehicle Idling Program	<a href="http://www.arb.ca.gov/enf/diesel.htm">http://www.arb.ca.gov/enf/diesel.htm</a>
Compression Ignition Engine Program (On-Road Heavy-Duty Vehicle Program)	<a href="http://www.arb.ca.gov/msprog/onroadhd/onroadhd.htm">http://www.arb.ca.gov/msprog/onroadhd/onroadhd.htm</a>
Drayage Truck Programs	<a href="https://www.arb.ca.gov/msprog/onroad/porttruck/porttruck.htm">https://www.arb.ca.gov/msprog/onroad/porttruck/porttruck.htm</a>
Emission Control Label Program (Heavy-Duty Diesel Emission Control Label)	<a href="http://www.arb.ca.gov/enf/diesel.htm">http://www.arb.ca.gov/enf/diesel.htm</a>
Heavy-Duty (Diesel) Vehicle Inspection Program (HDVIP)	<a href="http://www.arb.ca.gov/enf/hdvp/hdvp.htm">http://www.arb.ca.gov/enf/hdvp/hdvp.htm</a>
Ocean Going Vessels	<a href="https://www.arb.ca.gov/ports/marinevess/ogv.htm">https://www.arb.ca.gov/ports/marinevess/ogv.htm</a>
Periodic Smoke Inspection Program (PSIP)	<a href="http://www.arb.ca.gov/enf/hdvp/hdvp.htm">http://www.arb.ca.gov/enf/hdvp/hdvp.htm</a>
Port/Rail Cargo Handling Equipment Program	<a href="http://www.arb.ca.gov/ports/cargo/cargo.htm">http://www.arb.ca.gov/ports/cargo/cargo.htm</a>
Port/Rail Transport Refrigeration Unit Program (TRU)	<a href="http://www.arb.ca.gov/enf/diesel.htm">http://www.arb.ca.gov/enf/diesel.htm</a>
Portable Equipment Registration Program	<a href="https://www.arb.ca.gov/portable/portable.htm">https://www.arb.ca.gov/portable/portable.htm</a>
Public Agency and Utility Fleet Program	<a href="http://www.arb.ca.gov/msprog/publicfleets/publicfleets.htm">http://www.arb.ca.gov/msprog/publicfleets/publicfleets.htm</a>
School Bus Idling Program	<a href="http://www.arb.ca.gov/toxics/sbidling/sbidling.htm">http://www.arb.ca.gov/toxics/sbidling/sbidling.htm</a>
Selective Catalytic Reduction Program (Heavy-Duty Certification Program)	<a href="http://www.arb.ca.gov/msprog/cihd/cihd.htm">http://www.arb.ca.gov/msprog/cihd/cihd.htm</a>
Shore Power for Ocean-going Vessels	<a href="http://www.arb.ca.gov/ports/shorepower/shorepower.htm">http://www.arb.ca.gov/ports/shorepower/shorepower.htm</a>
SmartWay® Truck Technology Program (Tractor-Trailer)	<a href="http://www.arb.ca.gov/cc/hdghg/hdghg.htm">http://www.arb.ca.gov/cc/hdghg/hdghg.htm</a>
Solid Waste Collection Vehicle Program	<a href="http://www.arb.ca.gov/enf/diesel.htm">http://www.arb.ca.gov/enf/diesel.htm</a>
Transport Refrigeration Unit Program	<a href="http://www.arb.ca.gov/diesel/tru/tru.htm">http://www.arb.ca.gov/diesel/tru/tru.htm</a>
Truck and Bus Program	<a href="http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm">http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm</a>
Urban Transit Bus and Transit Fleet Vehicle Program (Advance Clean Transit)	<a href="http://www.arb.ca.gov/msprog/bus/bus.htm">http://www.arb.ca.gov/msprog/bus/bus.htm</a>
Verified Diesel Emission Control Strategies Program	<a href="http://www.arb.ca.gov/diesel/verdev/verdev.htm">http://www.arb.ca.gov/diesel/verdev/verdev.htm</a>

## DELIBERATIVE DRAFT

<b>Fuels Programs</b>	<b>Additional Information</b>
Cargo Tank Vapor Recovery Program	<a href="http://www.arb.ca.gov/enf/cargotanks/cargotanks.htm">http://www.arb.ca.gov/enf/cargotanks/cargotanks.htm</a>
Fuel Distributor Certification Program	<a href="https://www.arb.ca.gov/enf/fuels/distcert.htm">https://www.arb.ca.gov/enf/fuels/distcert.htm</a>
Fuels Enforcement Program	<a href="http://www.arb.ca.gov/enf/fuels/fuels.htm">http://www.arb.ca.gov/enf/fuels/fuels.htm</a>
Gasoline Deposit Control Additives Program	<a href="https://www.arb.ca.gov/enf/fuels/gdca/gdca.htm">https://www.arb.ca.gov/enf/fuels/gdca/gdca.htm</a>
Low Carbon Fuel Standard	<a href="https://www.arb.ca.gov/fuels/lcfs/lcfs.htm">https://www.arb.ca.gov/fuels/lcfs/lcfs.htm</a>
Oxygenate Blender Certification Program	<a href="https://www.arb.ca.gov/enf/lcfs/tipline.htm">https://www.arb.ca.gov/enf/lcfs/tipline.htm</a>
Reformulated Gas Certification Program	<a href="http://www.arb.ca.gov/enf/fuels/oxyblend.htm">http://www.arb.ca.gov/enf/fuels/oxyblend.htm</a>
	<a href="https://www.arb.ca.gov/fuels/gasoline/gasoline.htm">https://www.arb.ca.gov/fuels/gasoline/gasoline.htm</a>

<b>New Vehicles, Engine Certification, Tampering, SOREs and Fuel Canisters</b>	<b>Additional Information</b>
49-State Vehicle Program (Illegal Non-California Certified Vehicles)	<a href="http://www.arb.ca.gov/enf/othermbl.htm">http://www.arb.ca.gov/enf/othermbl.htm</a>
Aftermarket Parts Program (After-market Catalysts on OBD II Vehicles)	<a href="http://www.arb.ca.gov/enf/othermbl.htm">http://www.arb.ca.gov/enf/othermbl.htm</a>
Commercial Harbor Craft Program	<a href="http://www.arb.ca.gov/ports/marinevess/harborcraft.htm">http://www.arb.ca.gov/ports/marinevess/harborcraft.htm</a>
Dealership and Fleet Tampering Program (Tampering Detection Certification)	<a href="http://www.arb.ca.gov/enf/othermbl.htm">http://www.arb.ca.gov/enf/othermbl.htm</a>
Laboratory and Certification Fraud	<a href="https://www.arb.ca.gov/enf/contacts.htm">https://www.arb.ca.gov/enf/contacts.htm</a>
Large Spark-ignition Engine Program	<a href="http://www.arb.ca.gov/msprog/offroad/orspark/orspark.htm">http://www.arb.ca.gov/msprog/offroad/orspark/orspark.htm</a>
Marine Fuel Tank Program (Outboard Marine Tanks)	<a href="https://www.arb.ca.gov/consprod/fuel-containers/omt/omt.htm">https://www.arb.ca.gov/consprod/fuel-containers/omt/omt.htm</a>
New Motor Vehicle and Engine Program (On-Road)	<a href="http://www.arb.ca.gov/msprog/onroad/cert/cert.php">http://www.arb.ca.gov/msprog/onroad/cert/cert.php</a>
Off-Highway Recreational Vehicle Program	<a href="http://www.arb.ca.gov/msprog/offroad/orrec/orrec.htm">http://www.arb.ca.gov/msprog/offroad/orrec/orrec.htm</a>
Off-Road Heavy-Duty Diesel Vehicle Program (New Off-Road Compression-Ignition (Diesel) Engines and Equipment Program)	<a href="http://www.arb.ca.gov/msprog/offroad/orcomp/orcomp.htm">http://www.arb.ca.gov/msprog/offroad/orcomp/orcomp.htm</a>
Portable Fuel Container Program	<a href="http://www.arb.ca.gov/enf/oasse.htm">http://www.arb.ca.gov/enf/oasse.htm</a>
Recreational Marine Engines	<a href="http://www.arb.ca.gov/msprog/offroad/recmarine/background.htm">http://www.arb.ca.gov/msprog/offroad/recmarine/background.htm</a>
Refrigerant Canister Program	<a href="http://www.arb.ca.gov/cc/hfc-mac/hfcdiy/hfcdiy.htm">http://www.arb.ca.gov/cc/hfc-mac/hfcdiy/hfcdiy.htm</a>
Small Off-Road Engine Program	<a href="http://www.arb.ca.gov/msprog/offroad/sore/sore.htm">http://www.arb.ca.gov/msprog/offroad/sore/sore.htm</a>
Tire Pressure Inflation	<a href="https://www.arb.ca.gov/cc/tire-pressure/tire-pressure.htm">https://www.arb.ca.gov/cc/tire-pressure/tire-pressure.htm</a>

<b>Stationary and Green House Gas Programs</b>	<b>Additional Information</b>
Airborne Toxic Control Measures	<a href="https://www.arb.ca.gov/toxics/atcm/atcm.htm">https://www.arb.ca.gov/toxics/atcm/atcm.htm</a>
Climate Change Programs	<a href="https://www.arb.ca.gov/cc/cc.htm">https://www.arb.ca.gov/cc/cc.htm</a>
Chrome Plating Operations	<a href="https://www.arb.ca.gov/toxics/chrome/chrome.htm">https://www.arb.ca.gov/toxics/chrome/chrome.htm</a>
Landfill Methane Gas Program	<a href="http://www.arb.ca.gov/cc/landfills/landfills.htm">http://www.arb.ca.gov/cc/landfills/landfills.htm</a>
Refrigerant Management Program	<a href="http://www.arb.ca.gov/cc/rmp/RMP_Program_FAQ.pdf">http://www.arb.ca.gov/cc/rmp/RMP_Program_FAQ.pdf</a>
Perchlorate Program (Dry Cleaning Program)	<a href="http://www.arb.ca.gov/toxics/dryclean/dryclean.htm">http://www.arb.ca.gov/toxics/dryclean/dryclean.htm</a>
Sulfur Hexafluoride Reduction Program	<a href="http://www.arb.ca.gov/cc/sf6elec/sf6elec.htm">http://www.arb.ca.gov/cc/sf6elec/sf6elec.htm</a>

## DELIBERATIVE DRAFT

Other	Additional Information
Asbestos	<a href="https://www.arb.ca.gov/enf/asbestos/asbestos.htm">https://www.arb.ca.gov/enf/asbestos/asbestos.htm</a>
Complaint Hotline Services	<a href="http://www.arb.ca.gov/enf/complaints/complaints.htm">http://www.arb.ca.gov/enf/complaints/complaints.htm</a>
Goods Movement Program	<a href="http://www.arb.ca.gov/enf/goodsmvmt/goodsmvmt.htm">http://www.arb.ca.gov/enf/goodsmvmt/goodsmvmt.htm</a>
Red-Dyed Diesel Fuel Program	<a href="http://www.arb.ca.gov/enf/advs/advs124.pdf">http://www.arb.ca.gov/enf/advs/advs124.pdf</a>
Training Program	<a href="https://ssl.arb.ca.gov/training/training.htm">https://ssl.arb.ca.gov/training/training.htm</a>
Vapor Recovery Program	<a href="http://www.arb.ca.gov/vapor/vapor.htm">http://www.arb.ca.gov/vapor/vapor.htm</a>
Visible Emissions Evaluation Program	<a href="https://ssl.arb.ca.gov/training/courses.php?course=100.1">https://ssl.arb.ca.gov/training/courses.php?course=100.1</a>

**DELIBERATIVE DRAFT**

**Appendix B: Regulatory Matrix**

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## **Appendix C: Supplemental Environmental Projects Policy**

As a condition of all settlements, CARB requires the responsible party to achieve and maintain compliance with air quality laws and regulations and to pay a monetary civil penalty. In some cases, CARB may allow the violator to satisfy part of the monetary penalty by voluntarily offsetting a portion of their civil penalty by performing or funding one or more Supplemental Environmental Projects (SEP or Project). For purposes of this policy, SEPs are projects not otherwise required by law or regulation that benefit air quality by reducing emissions, reducing exposure to air pollution, or preventing future air quality violations.

If CARB approves a SEP as part of a settlement, the settlement agreement will provide that the violator agrees to conduct the SEP and CARB agrees to offset a portion of the penalty for SEP implementation. This policy meets the requirements of Public Resources Code section 71118, which requires each of the California Environmental Protection Agency's (CalEPA) boards, departments and offices that have enforcement authority to establish SEP policies that benefit disadvantaged communities. Specifically, Public Resources Code section 71118 requires CARB's SEP policy to include:

- A public process to solicit potential SEPs from disadvantaged communities.
- Allowing the amount of a SEP to be up to 50 percent of the enforcement action.
- Developing an annual list of SEPs that may be selected to settle a portion of an enforcement action.
- Consideration of the relationship between the location of the violation and the location of the proposed SEP.

This policy provides CARB's process for selection of SEPs and how CARB will oversee implementation of SEPs that are included in settlement agreements. CARB will annually develop a list of eligible SEPs through a public process, make this list available on CARB's website, and provide this list to CalEPA at least on an annual basis.

### **SEP Selection Criteria**

A SEP must meet the following criteria in order to be eligible for funding:

- Furthers CARB's purpose of cleaning up the air by
  - a) reducing the risk burden posed to public health,
  - b) preventing future air quality problems beyond those addressed in current air quality programs, or
  - c) improving the environment,
- Has a nexus to the violation either through location (i.e., the SEP furthers CARB's purpose of cleaning up the air in the specific community where the violation occurred) or through pollutant (i.e., the SEP furthers CARB's purpose of cleaning up the air by addressing the pollutants involved in the violation),

## DELIBERATIVE DRAFT

- Does not benefit the violator, and
- Goes beyond regulatory requirements that are imposed by a federal, state, or local responsible party.

CARB prefers SEPs that meet one or more of the following criteria:

- Provide direct emissions or exposure reductions,
- Benefit disadvantaged communities,
- Provide community benefits in addition to furthering CARB's purpose of cleaning the air,
- Address multiple environmental problems (such as SEPs that have water, soil, or other environmental benefits in addition to air benefits).

Up to 50% of the penalty amount negotiated in a settlement may be offset with a SEP.

### SEP Categories

A SEP shall fall into one or more of the following categories:

- Pollution Prevention or Reduction – Preventing or reducing air pollution including greenhouse gas emissions.
- Environmental Restoration and Protection – Improve or restore the quality of the environment.
- Environmental Education or Compliance Training – Provide assistance to educators, schools, and community groups to conduct training and public awareness campaigns to the public and the regulated community.
- Community Monitoring – Provide tools, such as surveillance and monitoring equipment, to be used by trained members of the public for data acquisition and enhancement of existing air quality monitoring stations.
- Trans-Boundary – Provide support for projects that provide a direct benefit to Californians in and around the border environment with other states and Mexico.
- Other – Other acceptable SEPs can be considered on a case-by-case basis. In limited circumstances, the Executive Officer may make an exception to this policy if there is an extraordinary benefit to human health or the environment that outweighs the considerations used in developing this policy.

### Responsibilities of Violators

Through the settlement process, the violator may agree to implement a SEP. The violator may choose one of the following options:

- Design and implement a SEP
  - If the violator chooses to design and implement a SEP,
    - CARB must approve the SEP designed by the violator,

## DELIBERATIVE DRAFT

- The violator is responsible for ensuring the project is completed,
  - The portion of the settlement allocated to a SEP is treated as a suspended penalty that is waived upon project completion. If the SEP is not completed, the violator must pay the suspended penalty,
  - The violator is responsible for overseeing the project and reporting to CARB, including progress reports and a final report declaring the completion of the SEP, addressing how the expected project goals were met, and certifying post-project accounting of expenditures, and
  - CARB must approve the final report before the penalty is waived. If the SEP is only partially completed, CARB will determine the amount of the penalty waived.
- Select a SEP from the CARB list and deposit money in a SEP administrator account
    - The SEP is considered complete and the penalty waived once the violator has deposited money in the SEP administrator account.
    - The SEP recipient is responsible for ensuring SEP completion.
  - Deposit money in a SEP administrator account
    - The SEP is considered complete and the penalty waived once the violator has deposited money in the SEP administrator account.
    - The SEP administrator is responsible for selecting a suitable SEP from the CARB list consistent with this policy.
    - The SEP recipient is responsible for ensuring SEP completion.

### Responsibilities of SEP Administrators

A SEP administrator is a party contracted with CARB to administer a SEP or group of SEPs. SEP administrators are responsible for:

- Managing financial contributions to SEPs by:
  - Collecting and managing SEP payments received from violators,
  - Tracking funds by location of violation and type of pollutant,
  - Tracking funds allocated for specific SEPs,
  - Disbursing funds to SEPs, and
  - Tracking and accounting for disbursed funds,
- Ensuring that any selected SEP meets the requirements and criteria defined in this policy,
- Providing tracking, oversight, and reporting of the project to CARB, including:
  - Monitoring the timely and successful completion of each SEP,
  - Requesting and maintaining Project accounting from SEP recipient,

## DELIBERATIVE DRAFT

- Notifying CARB if a SEP recipient is not meeting proposed schedule or milestones,
- Providing quarterly progress reports and a final completion report for each SEP, declaring the completion of SEPs, certifying SEP accounting of expenditures upon completion, and describing the overall environmental and community benefits of the project, and
- Providing an annual report to CARB that describes funding received, funding expended, remaining available funding, SEPs funded, and any other information requested by CARB.

## **DELIBERATIVE DRAFT**

### **Appendix D: California Air Resources Board Automated License Plate Reader Privacy and Usage Policy**

The California Air Resources Board (CARB) collects emissions information for research and enforcement. Sometimes data is collected at the roadside from a large number of trucks. CARB is developing a new system, called the Portable Emissions AcQuisition System (PEAQS), which measures emissions as cars or trucks pass sensors. PEAQS is equipped with an Automated License Plate Reader (ALPR) and will be used to assess the distribution of emissions by model year, make/model, and technology type from cars and trucks. This is necessary for investigating tampered or malfunctioning vehicles air monitoring, fleet characterization, identifying the effectiveness of CARB regulations, and future policy recommendations. PEAQS will be used as a screening tool to identify high emitting vehicles for inspection in the field or a fleet-level investigation. If CARB expands the use of PEAQS beyond screening methods, it will do so following a public process.

The ALPR system component is a mobile or fixed camera that is combined with sophisticated computer software to capture and record a vehicle's license plate information. These systems typically operate by photographing an image of a license plate, using optical character recognition (OCR) software to convert the image into the alpha-numeric characters of the license plate, and then comparing the alpha-numeric data to data held in other databases. ALPR systems capture other data as well, including the geographic location of a license plate and the time and date that the license plate was scanned. The ALPR systems can also provide a "contextual" photo of the car itself, making information about car make and model, distinguishing features, state of registration, and driver and passenger potentially available. The ALPR system does not identify a specific person.

The photograph the system generates is not considered "personally identifiable information" (PII) because it does not contain an individual's first name or first initial and last name, and it is not paired with data elements such as an individual's social security number, or driver's license number. However, the data generated from the photograph with the use of an ALPR system can be linked to an identifiable person through a registration database, such as the Department of Motor Vehicles (DMV). When ALPR information is cross referenced with DMV registration data, it provides make/model, and model year along with the registered owner information. CARB has a long history of managing DMV data and adheres to DMV data management requirements as outlined in the DMV Information Security Agreement (DISA), and the CARB Information Security Manual (ISM).

## **Requirements**

CARB's ALPR Privacy and Usage Policy incorporates the requirements of Civil Code sections 1798.29, 1798.82, and 1798.90.5, et seq., which requires all public agencies that operate an ALPR system shall maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards to protect ALPR information from unauthorized access, destruction, use, modification or disclosure. At a minimum, public agencies must:

- Implement a usage and privacy policy that ensures all public agencies collect, use, maintain, share, and disseminate ALPR information in an authorized and secure manner.
- Disclose any breach of security of the data to any affected resident of California, consistent with the requirements of Civil Code section 1798.29.
- Provide an opportunity for public comment at a regularly scheduled public meeting before implementing the program.

The ALPR Privacy and Usage Policy is available to the public in writing, and is posted on CARB's Internet Web site at: <https://www.arb.ca.gov/enf/policy2017.htm>

## **Policy**

- ALPR information will be collected only for the purposes of research, regulation development and implementation, emissions inventory, or enforcement.
- CARB will designate a custodian responsible for ALPR data and the effective implementation of this policy.
- Only trained and authorized staff will generate, store, access, or analyze ALPR information.
- ALPR information will be stored only on limited access and encrypted drives that meet state standards for storing data, including but not limited to NIST Cryptographic Module Validation Program or equally protective standards that are generally accepted.
- CARB staff will maintain records of each staff person that generates, stores, accesses, or analyzes ALPR data consistent with Civil Code section 1798.90.52.
- CARB will provide training to each staff person that ensures the security of the information and compliance with applicable privacy laws.

## DELIBERATIVE DRAFT

- ALPR information will not be sold, shared, or transferred to other persons outside of CARB, except for the following purposes:
  - Law enforcement agencies for authorized law enforcement purposes.
  - Public agencies that have signed a confidentiality agreement and agreed to keep the information confidential.
- ALPR information that has been cross referenced to DMV registration information will be treated as DMV registered data.
- ALPR information will be retained and destroyed consistent with CARB's file retention policy.
- Aggregate data, vehicle make, model, model year, and technology emissions information are not considered confidential information.

### Procedures

- The assigned ALPR data custodian is CARB's Chief Information Officer (CIO), or designee. The ALPR custodian will monitor the ALPR system and ensure the security of the ALPR information by:
  - Maintaining a log for each time the ALPR information is accessed between operators and users.
  - Verifying only authorized users have access to ALPR information by conducting periodic audits of access and usage.
  - Ensuring each ALPR operator and user has taken all required training before accessing ALPR information.
- All authorized ALPR system operators, users, and custodians must receive training, which will be part of the DMV data security training and include:
  - A security briefing presentation.
  - A signed confidentiality acknowledgement form, which confirms that they have received and understand all ALPR policies and procedures.
- The custodian will keep a list of trained users and operators that includes name, title, and contact information and will be updated annually.
- CARB staff will view the image of the license plate and cross reference it with the information produced by the ALPR system to confirm that the image of the license plate was correctly recognized by the ALPR system. If a data error is found, CARB staff will correct the error in the database and notify management.
- All ALPR users, operators, and custodians must document access to ALPR information in a usage log and it must contain the following information:
  - The date and time the information is accessed.
  - The license plate number or other data elements used to query the ALPR system.
  - The username of the person who accesses the information.

## DELIBERATIVE DRAFT

- The purpose for accessing the information.
- The log is maintained electronically at their workstation, and is submitted to the custodian on a quarterly basis.
- In the event of a data security breach involving ALPR data, CARB staff will notify CARB's ISO, who will take the following steps:
  - Notify the subject of the security breach in accordance with the requirements of section 1798.82 of the Civil Code.
  - Follow the procedural requirements of the Statewide Information Management Manual (SIMM).

### **Changes to the Policy**

CARB reserves the right to revise this policy at any point in the future and such changes will be retroactively applicable to data collected prior to any revision of this policy. When CARB revises the ALPR Privacy and Usage Policy, the "last updated" date at the top of the ALPR Privacy and Usage Policy will reflect the date of the last change. We encourage visitors to review this ALPR Privacy and Usage Policy periodically.